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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

On May 11, 2006

TOWNSEND and TOWNSEND and CREW LLP

By:

JoAnn Evangelista
JoAnn Evangelista

PATENT

Attorney Docket No.: 018563-003300US

Client Ref. No.: AT-00079

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

CHRISTOPHER THOMAS SEPE

Application No.: 09/621726

Filed: July 24, 2000

For: DELIVERY INFORMATION
SYSTEMS AND METHODS

Customer No.: 46718

Confirmation No. 6440

Examiner: MEINECKE DIAZ,
SUSANNA M

Technology Center/Art Unit: 3623

RESPONSE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed January 11, 2006, Applicant respectfully requests that all rejections be withdrawn in view of the following comments.

All pending claims were rejected over U.S. Patent Publication 2002/0082865 to Bianco et al. in view of U.S. Patent Publication 2002/0077850 to McMenimen et al. Such rejections are respectfully traversed since neither of these references is available as prior art under 35 USC §102(e).

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As the Examiner is certainly aware, references relied on under 35 USC §103(a) must be available as prior art under an appropriate section of 35 USC §102. See MPEP §706.2(a). As both the Bianco and the McMenimen publications were filed after the filing date of the present application, neither of these publications qualify as prior art. Thus, Applicant respectfully submits that the present rejections must be withdrawn.

Applicant recognizes that each of these publications has a corresponding provisional application which was filed prior to the filing date of the present application. Applicant notes that the provisionals are quite different than the published applications. While Applicant concedes that the disclosures of these provisional applications might be relied on under certain circumstances, to do so the Examiner must point to relevant disclosure in the provisional text. Applicant further wishes to point out that while the provisional application underlying the McMenimen et al. publication was incorporated into that publication by reference, the provisional application underlying the Bianco publication does not appear to have been incorporated by reference. A word search of the publication fails to show an incorporation by reference. Thus, with respect to Bianco et al., the Examiner not only cannot rely on the provisional text as prior art, but must instead find teachings which appear both in the published Bianco application and in the provisional application.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

James M. Heslin
Reg. No. 29,541

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Application Number

09/521726

Filing Date

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First Named Inventor

SEPE, CHRISTOPHER THOMAS

Art Unit

3623

Examiner Name

MEINECKE DIAZ, SUSANNA M

Attorney Docket Number

018563-003300US / AT-00079

ENCLOSURES (Check all that apply)

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| <input type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
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| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
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| <input checked="" type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Terminal Disclaimer | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Townsend and Townsend and Crew LLP

Signature

Printed name

James M. Heslin

Date

May 11, 2006

Reg. No.

29,541

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JoAnn Evangelista

Date

May 11, 2006